



3. BPB and Homebase have a full and adequate remedy at law for damages as against Miller for any alleged conversion of the liquor license, such that injunctive relief is not warranted in this case. *See: Danieli & C. Officine Meccaniche S.p.A. v. Morgan Construction Co.*, 190 F.Supp.2d 148 (D. Mass. 2002).

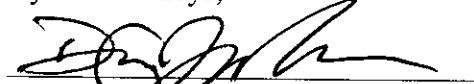
4. No immediate and irreparable injury, loss or damage will result to BPB and Homebase from Miller's possession of the liquor license and BPB and Homebase have not met their burden of persuasion that they cannot be returned to the position they previously occupied, insofar as the restaurant facility for which the license was originally issued is vacant and has been in disuse for an extensive period of time<sup>1</sup>, and the transfer of the liquor license to Miller does not alter that circumstance, such that BPB and Homebase's alleged injury is merely speculative at best. *See: Micro Networks Corp. v. HIG Hightec. Inc.*, 188 F. Supp.2d 18 (D.Mass. 2002).

WHEREFORE, Miller requests that BPB and Homebase's motions for temporary and preliminary injunctive relief be DENIED.

Dated: February 11, 2004

THE DEFENDANT

By his attorneys,



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<sup>1</sup> BPB and Homebase allege in their Complaint, at ¶37, that the real estate which forms the subject matter of this action is in fact "undesired property".

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF MASSACHUSETTS  
WESTERN DIVISION

BPB, LLC and HOMEBASE  
PROPERTIES, LLC d/b/a "Munchies",  
Plaintiffs

v.

JOSEPH J. MILLER,  
Defendant

Docket No. 04-30021-MAP

## CERTIFICATE OF SERVICE

I, Douglas J. Rose, Esq., do hereby certify that I caused a true copy of the within Objection to be delivered by first class U. S. mail, postage prepaid, this 11 day of February, 2004 to David R. Cianflone, Esq., 59 Bartlett Avenue, Pittsfield, MA 01201.

  
Douglas J. Rose

DJR:SLD